

**Remarks**

**1. *Objection to the Abstract***

The abstract of the disclosure has been objected to “because it must be one paragraph and concise,” referring to MPEP § 608.01(b). Regarding the statement in the Office Action that the abstract is not concise, the Applicant respectfully disagrees. However, to comply with the one paragraph requirement of MPEP § 608.01(b) and as a courtesy to the Examiner, the Applicant has amended the abstract.

**2. *Objection to the Title***

The title of the disclosure has been objected to. The Office Action states that “[t]he title of the invention is not descriptive.” The Applicant respectfully disagrees. However, as a courtesy to the Examiner, the Applicant has amended the title.

**3. *Objections to the Claims***

Claims 1-32 have been objected to as claiming a device, method and system in the same claim. The Applicant respectfully disagrees. However, the Applicant has amended claims 1, 3-5, and 8-10 to more clearly claim a method in amended and original claims 1 and 3-10. New claims 33-38 claim a device.

**4. *Claims rejected under 35 USC §101***

Claim 14 has been rejected under 35 USC § 101 as claiming the non-statutory subject matter of changing size. The Applicant respectfully disagrees. The Applicant is unaware of any authority stating that changing size is non-statutory subject matter under 35 USC § 101. Perhaps the Examiner intended to refer to obviousness under 35 USC § 103(a). See, e.g., MPEP § 2144.04, section IV.A. The Applicant asserts that claim 14 was non-obvious in light of MPEP § 2144.04, section IV.A. However, to expedite prosecution, the Applicant has cancelled claim 14 without prejudice. The Applicant reserves the right to persecute the subject matter of claim 14 in this or a related application.

**5. *Claims rejected under 35 USC §112***

Claims 1, 15, 17 and 32 have been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Applicant traverses this rejection as follows.

The Office Action states that the term “field upgradeable system software”, is used by the claims to mean “that the software can be upgraded outside of the factory or offices”, while the accepted meaning is “remote upgradeable system.” The Office Action states further that “[t]he term is indefinite because the specification does not clearly redefine the term.” The Office Action proffers an alternate term, that is, “remote upgradeable system” software. The Applicant asserts that from the very characterization of the problem in the Office Action, it is clear that the term “field upgradeable system software” satisfies the requirements of 35 U.S.C. § 112, second paragraph. However, the Applicant has amended claims 1 to no longer claim a field upgradeable system software and cancelled claims 15, 17 and 32. Accordingly, the rejection with respect to 35 U.S.C. § 112, second paragraph and the term “field upgradeable system software” is moot. The Applicant reserves the right to pursue claims to “field upgradeable system software” in this or a related application.

The Office Action states that the term “symbol accessor code” is indefinite under 35 U.S.C. § 112, second paragraph. Specifically, the Office Action states “[t]he term ‘symbol accessor code’ in claims 5, 9 is used by the claim to mean ‘symbol access code’, while the accepted meaning is ‘symbol access code.’” Thus, the Office Action prefers the term “symbol access code”, while the claimed term is “symbol accessor code”. The only difference is the “or” in “accessor”. The Applicant respectfully asserts that the term “symbol accessor code” is defined at least by the Specification at p. 17, line 21 to p. 18, line 10, as follows:

The symbol accessor code uses the code section address table and symbol offset address tables to find the exact address of a sought symbol in memory. That is, the symbol accessor code accesses the code section address table and the symbol offset address table to calculate the address of the sought symbol. For example, if the “X” symbol in symbol library one is sought, the symbol accessor is invoked to seek the symbol identifier (symbol ID) X\_1, corresponding to the “X” symbol (see Fig. 7). The symbol accessor code consults the symbol offset address to determine that the X\_1 symbol identifier has an offset of (03) from the start of code section one (see Fig. 6). The symbol accessor code is invoked to seek the code section identifier CS\_1, corresponding to code section one. The symbol accessor code consults the code section address table to determine the start address associated with code section identifier (code section ID) CS\_1. In this manner, the symbol accessor code determines that the symbol identifier X\_1 is offset (03) from the address of (00100), or is located at address (00103).

See also p. 3, lines 21-23 and p. 17, lines 6-8. Accordingly, the Applicant asserts that the term “symbol accessor code” is not indefinite under 35 U.S.C. § 112, second paragraph. The

Applicant respectfully requests that the rejection with respect to “symbol accessor code” and 35 U.S.C. § 112, second paragraph, be withdrawn.

The Office Action states that the term “symbol library” is indefinite under 35 U.S.C. § 112, second paragraph. Specifically, the Office Action states, “[t]he term ‘symbol library’ in claims 1-32 is used by the claim to mean ‘a combination of object code’, while the accepted meaning is ‘executable file, program, software, etc.’ The term is indefinite because the specification does not clearly redefine the term.” The Applicant respectfully disagrees.

The Specification, at p. 15, line 11 to p. 16, line 3, defines the term “symbol library” as follows.

As noted above, each symbol library includes functionally related symbols. A symbol is a programmer-defined name for locating and using a routine body, variable, or data structure. Thus, a symbol can be an address or a value. Symbols can be internal or external. Internal symbols are not visible beyond the scope of the current code section. More specifically, they are not sought by other symbol libraries, in other code sections. External symbols are used and invoked across code sections and are sought by libraries in different code sections. The symbol offset address table typically includes a list of all external symbols.

For example, symbol library one may generate characters on a wireless device display. Symbols in this library would, in turn, generate telephone numbers, names, the time, or other display features. Each feature is generated with routines, referred to herein as a symbol. For example, one symbol in symbol library one (310) generates telephone numbers on the display. This symbol is represented by an “X”, and is external. When the wireless device receives a phone call and the caller ID service is activated, the system must execute the “X” symbol to generate the number on the display. Therefore, the system must locate the “X” symbol.

See also Specification, p. 7, lines 11-17 and p. 12, line 22 to p. 13, line 2. However, the Applicant has amended the claims, eliminating the use of the term “symbol library,” rendering the rejection moot. The Applicant reserves the right to pursue claims directed to a “symbol library” in this or a related application.

The Office Action further states with respect to 35 U.S.C. § 112, second paragraph, that “[t]he claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical, idiomatic errors and obsolete terms.” The Applicant respectfully disagrees with this characterization of the claims. The Applicant believes that this characterization refers to the above-described rejections with respect to specific terms and referring to 35 U.S.C. § 112, second

paragraph. Accordingly, this characterization of the claims is traversed in part and moot in part, as described above. If the Examiner continues to believe the claims to be indefinite under 35 U.S.C. § 112, second paragraph, the Applicant requests that the Examiner cite specific terms and give specific explanations for those specific terms, so that the Applicant can respond specifically.

**6. Claims 1-32 rejected under 35 USC §103(a)**

Claims 1-32 have been rejected. Claims 1, 3-5 and 8-10 have been amended. Claims 2 and 11-32 have been cancelled. Claims 33-38 have been added. Thus, claims 1, 3-10 and 33-38 are pending.

**a. Hansson and Shirai**

In the Office Action, claims 1-2, 4, 10-14, 17-18, 20, 26-30 and 31-32 have been rejected under 35 U.S.C. 103(a) as unpatentable over Hansson, U.S. Patent No. 6,023,620 (hereinafter, “Hansson”) in view of Shirai, U.S. Patent Appl. Pub. No. 2001/0051519 A1 (hereinafter, “Shirai”). Regarding the rejection as to claims 1 and 32, the Applicant respectfully disagrees. However, in order to expedite prosecution, the Applicant has amended claim 1 to include most of the subject matter of cancelled claim 2, and the Applicant has cancelled claim 32. The Applicant reserves the right to prosecute the subject matter of previous claim 1 and cancelled claim 32 in this or a related application.

Regarding claims 2 and 10-14, the Office Action states,

Shirai does not specifically disclose maintaining a code section address table cross-referencing code section identifiers with corresponding start addresses. However, OFFICIAL NOTICE IS TAKEN THAT maintaining a code section address table cross-referencing code section identifiers with corresponding start addresses is a common and well-known technique known as symbol table. Therefore, it would have been obvious to one of the ordinary skill in the art at the time of the invention to add this technique for the simple purpose of knowing where is the data for later use. (Emphasis in original.)

The Applicant has amended claim 1 to include most of the subject matter of claim 2. The Applicant traverses the rejection with respect to claims 2 and 10-14 as follows.

An examiner may take official notice of facts outside of the record which are capable of instant and unquestionable demonstration as being “well-known” in the art. *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970). See MPEP § 2144.03.

“If the applicant traverses [an assertion of official notice] the examiner should cite a reference in support of his or her position.” MPEP § 2144.03. “A challenge to the taking of judicial

notice must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying the judicial notice.” MPEP § 2144.03 (citing *In re Boon*, 439 F.2d 724, 169 USPQ 231 (CCPA 1971). Further, “[t]he facts constituting the state of the art are normally subject to the possibility of rational disagreement among reasonable men and are not amendable to the taking of [judicial] notice.” MPEP § 2144.03 (quoting *In re Eynde*, 480 F.2d 1364, 1370, 178 USPQ 470, 474 (CCPA 1973).

Applicant respectfully asserts that the claimed “storing a code section address table” (amended claim 1) cross-referencing code section identifiers with corresponding start addresses is not capable of instant and unquestionable demonstration as being ‘well known’ in the art under *In re Alert*. Specifically, the Applicant refers to the two references cited against previous claim 2, that is, Hansson and Shirai. Hansson refers to updating wireless communication device software via wireless communication. However, Hansson contemplates updating the entire software in one whole piece. Thus, a complete old version of the software and a complete new version of the software are simultaneously stored on the handset. Sections of the software are not contemplated or used as claimed in claim 1.

Furthermore, Shirai does not teach or suggest storing a code section address table. Shirai does teach writing and modifying only sections of the software, but Shirai does not teach storing or maintaining a code section address table. For example, it is possible that the instructions to overwrite an old section of code would have to include the address to be overwritten. That is, Shirai does not describe looking in a code section address table to determine where the old code section resides in memory. Since neither Hansson nor Shirai teach or suggest a code section address table, the Applicant asserts that there is at least reasonable doubt regarding the circumstances purportedly justifying the judicial notice. Accordingly, the Applicant respectfully requests an allowance of claim 1 and claims 3, 4 and 10, which depend from claim 1.

The Office Action rejects claim 4 as being unpatentable over Hansson in view of Shirai. The Applicant traverses this rejection as follows. First, claim 4 depends from claim 1 and therefore enjoys all of the distinctions of claim 1 over Hansson and Shirai. Second, the additional claimed step of claim 4, namely, “forming read-write data for the plurality of code sections in a shared read-write code section” is not taught or suggested by either Hansson or Shirai. In order to demonstrate that Hansson does not teach or suggest the claimed step of “forming read-write data for the plurality of

code sections” the Applicant quotes Hansson, col. 3, lines 5-24 here, which was cited by the Office Action with respect to claim 4:

The controller 140 calculates a checksum on the new software transmitted by the update server processor 100 and compares the calculated checksum against a checksum transmitted to the cellular telephone 110 by the update server processor 100. If the calculated checksum does not match the transmitted checksum, the controller 140 requests a retransmission, does not toggle the designation of the two memories 130 and 150, and the cellular telephone 110 continues to operate using the original software, which for this example is located in the first memory 130. If, on the other hand, the checksum is successful the controller 140 toggles the designation of the two memories 130 and 150. Thus, for example, memory 150 containing the new software is designated as active, and conversely, memory 130 is designated as inactive. The cellular telephone 110 now uses the new software located in the second memory 150 which becomes the current version of the software. Finally, the cellular telephone 110 transmits a message to the update server processor 110 acknowledging the successful update.

Hansson, col. 3, lines 5-24.

The above-quoted portion of Hansson describes performing a checksum on the downloaded software, to ensure that the download was error free. Two complete versions of the software are stored in memory, one being the old version, and the other being the newly downloaded version. If the downloaded version passes the checksum test, then the downloaded version is used. Certainly, this does not include “forming read-write data for the plurality of code sections” as claimed in claim 4.

**b. Hansson, Shirai and Kuroda**

The Office Action rejected claims 3, 16 and 19 as being unpatentable over Hansson in view of Shirai and further in view of Kuroda, et al., U.S. Pat. No. 6,457,174 B1 (hereinafter, “Kuroda”). The applicant has amended claim 1, from which claim 3 depends, and cancelled claims 16 and 19 without prejudice to further prosecution. The Applicant reserves the right to prosecute the subject matter of previous claim 3 and cancelled claim 16 in this or a related application. The Applicant traverses the rejection with respect to claims 3 as follows.

An invention is unpatentable if the differences between it and the prior art would have been obvious at the time of the invention. As stated in MPEP § 2143, there are three requirements to establish a *prima facie* case of obviousness:

First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference

or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

With respect to the third prong of an obviousness analysis, the combination of the references does not yield all the limitations of the claimed invention. Claim 3 depends from claim 1. Accordingly, claim 3 includes the step of claim 1 of “storing a code section address table”. As described above with respect to claim 1, neither Hansson nor Shirai teaches or suggests storing a code section address table. Kuroda does not teach or suggest storing a code section address table. Accordingly, the Applicant respectfully requests an allowance of claim 3.

Furthermore, the Applicant asserts that the Office Action does not demonstrate a motivation to combine the Kuroda reference with the Hansson and Shirai references. Still further, the Office Action does not show a reasonable expectation of success of producing the claimed invention, even if Kuroda could be combined with Hansson and Shirai. Accordingly, the Applicant respectfully requests an allowance of claim 3 and claims 5-9, which depend from claim 3.

**c. Hansson, Shirai and Honda**

The Office Action rejects claim 5-9 as being unpatentable over Hansson in view of Shirai and further in view of Honda, U.S. Pat. No. 6,498,789 B1 (hereinafter, “Honda”). The Applicant traverses this rejection as follows. First, claim 5 depends from claim 3 and therefore enjoys all of the distinctions of claim 3 over Hansson and Shirai (and Kuroda). Further, Honda does not teach or suggest storing a code section address table. Claims 6-9 depend from claim 5 and therefore enjoy all of the distinction of claim 5 over Hansson, Shirai and Honda.

Second, the additional claimed steps of claim 5 are not taught or suggested by Honda. Claim 5 claims:

...wherein forming the wireless communication device system software into a plurality of code sections includes forming a symbol accessor code and arranging the symbol accessor code in a first code section; and  
the method further comprising:  
storing a symbol accessor code address in a first location in memory;  
in response to referencing the first location in memory, accessing the symbol accessor code; and  
invoking the symbol accessor code to calculate the address of a sought symbol using a corresponding symbol identifier, and a corresponding code section identifier.

None of these steps and limitations is taught or suggested by Honda. In order to demonstrate that Honda does not teach or suggest the steps and limitations of claim 5, the Applicant quotes Honda, col. 5, line 66 to col. 6, lines 27 here, which was cited by the Office Action with respect to claim 5:

According to the sixth aspect of the present invention, a CDMA mobile communications device comprises: a radio receiving section for converting a signal received by an antenna into a signal of base band range; a RAKE receiving section which separates an output from the radio receiving section for each transmission path and despreads the thus-separated outputs for each in-phase component and for each quadrature component by means of despreading operations through use of the short code; a plurality of buffers which store outputs from the RAKE receiving section for respective paths; a symbol combining section which combines outputs from the buffers; a buffer control section which calculates write and addresses of each buffer on the basis of information about the timing of the signal for each path received from the RAKE receiving section in order to prevent phase shift among the outputs from the buffers at the time of combining of a symbol; a long cycle string code (long code) generator; a decimateing (sic) section which decimates an output from the long code generator; a long code demodulator which processes an output (received long code) from the decimating section and an output (received symbol) output from the symbol combining section by means of exclusive OR operations; an error detection-and-correction section which reproduces received data by detection and correction of an error in the symbol output from the long code demodulator; and a demodulated data processing section which decomposes the reproduced data into a sound signal and a control signal. The device can combine RAKE received output signals of each path without phase shift.

Honda, col. 5, line 66 to col. 6, line 7.

The above-quoted portion of Honda has nothing to do with any of the steps of any of claims 5-9. Accordingly, the Applicant requests allowance of claims 5-9.

**d. New claims 33-38.**

Regarding device claims 33-38, "a code section address table" is claimed in independent claim 33. The Applicant asserts that claim 33 is allowable for at least the reasons described above with respect to claim 1. Accordingly, the Applicant respectfully requests an allowance of claim 33.

Regarding claim 34, which depends from claim 33, claim 34 is allowable for at least the reasons described above with respect to claim 33. Additionally, claim 34 claims a symbol offset address table. Thus, claim 34 is allowable for at least the reasons described above with respect to claim 3. Accordingly, the applicant respectfully request allowance of claim 34.

Regarding claim 35, which depends from claim 33, claim 35 is allowable for at least the reasons described above with respect to claim 33. Additionally, claim 35 claims a read-write section. Thus, claim 35 is allowable for at least the reasons described above with respect to claim 4. Accordingly, the applicant respectfully request allowance of claim 35.

Regarding claims 36-38, which depend from claim 34, claim 36-38 are allowable for at least the reasons described above with respect to claim 34. Accordingly, the applicant respectfully request allowance of claims 36-38.


The Applicant has reviewed the references made of record by the Office Action. The Applicant asserts that the claimed invention as claimed in claims 1, 3-10 and 33-38 is patentably distinct from the references made of record.

#### Conclusion

Claims 1-32 have been rejected. Claims 1, 3-5 and 8-10 have been amended. Claims 2 and 11-32 have been cancelled without prejudice to further prosecution. Claims 33-38 have been added. Accordingly, claims 1, 3-10, and 33-38 are pending. The applicant respectfully requests an early allowance of pending claims 1, 3-10 and 33-38. If the Examiner has any questions or comments regarding the above Amendments and Remarks, or if the Examiner believes that a telephone conversation would facilitate prosecution, the Examiner is respectfully urged to contact the undersigned at the number listed below.

Respectfully submitted,

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